



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

September 19, 2016

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Expiration Date: 09/19/2018  
Affected IRMs: 8.7.10  
8.20.7

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: John V. Cardone /s/ *John V. Cardone*  
Director, Policy, Quality and Case Support

SUBJECT: Excise Tax Dyed Fuel and Refusal Penalty Cases

**Purpose:** This memorandum issues guidance on the closing procedures for Dyed Fuel and Refusal Penalty cases until the above IRMs are published. Please distribute this information to all affected employees within your organization.

**Background:** This guidance is being issued to conform Appeals closing procedures for Excise Tax Dyed Fuel and Refusal Penalty Cases to existing work streams. Revenue Procedure 2001-33 created an exception where Appeals did not process adjustments for these cases when closing the file, which created administrative errors for both Appeals and the compliance function. Given the number of cases involved, it has been determined that the processing exception should be removed and Appeals will process adjustments upon closing. This guidance provides the necessary revised closing procedures.

**Procedural Change:** Appeals will process the adjustment as part of the case closing process and will not return Dyed Fuel and Refusal Penalty cases to SB/SE for assessment.

**Effect on Other Documents:** This guidance will be incorporated into IRM 8.7.10, *Technical and Procedural Guidelines - Excise Tax Cases and IRA Adjustments* and IRM 8.20.7, *Account and Processing Support (APS) - Closing Procedures*, within 2 – years of the effective date.

**Effective Date:** This interim guidance is effective immediately.

**Contact:** Appeals personnel should elevate any question through the appropriate management chain.

**Attachment(s):**

Attachment 1 – 8.7.10.12.5, *Reaching a Conclusion in a Case*, and 8.7.10.12.6, *Closing of Dyed Fuel Penalty Cases*

Attachment 2 – 8.20.7.28.2, *Dyed Diesel Fuel Penalty Case Closing*

cc: [www.irs.gov](http://www.irs.gov)

## **Attachment 1**

### **IRM 8.7.10.12.5**

#### **Reaching a Conclusion in a Case**

- (1) Upon reaching a settlement determination of a dyed fuel and refusal penalty in whole or part, you must prepare:
  - a) Customized Form 5402
  - b) Appeals Case Memorandum, ACM, (or remarks on Form 5402, if appropriate)
  - c) Closing letter
  - d) Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, if the penalties are not upheld. If upheld, verify the accuracy of the Form 8278 in the file.
- (2) If you sustain the proposed refusal penalty, also prepare Form 2828 and forward the case to Area Counsel for advice and direction on penalty enforcement.
- (3) Use these closing codes on Form 5402:
  - a) 14 – Fully Sustained
  - b) 15 – Fully Abated
  - c) 16 - Partially Abated
- (4) Upload an electronic copy of Form 5402 and ACM into IMS if there is an IMS case.
- (5) There is no formal closing letter for these types of cases on ACDS at this time. Information in the closing letter may include the following statements:
  - a) We have considered your protest and the evidence and arguments in support of your position against the (insert penalty type here).
  - b) If you would like to challenge our determination in court, you may file a complaint in the United States District Court or the United States Court of Federal Claims. If you decide to do this, you must first pay the amount owed and file a claim for refund. Once the claim for refund is denied or 6 months elapse without any action by the Service, you may initiate suit.

### **IRM 8.7.10.12.6**

#### **Closing of Dyed Fuel and Refusal Penalty Cases**

- (1) For APS procedures regarding closing dyed fuel and refusal penalty cases, refer to IRM 8.20.7.28.2, *Dyed Diesel Fuel Penalty Case Closing*.

## Attachment 2

### IRM 8.20.7.28.2

#### Dyed Diesel Fuel Penalty Case Closing

- (1) APS will update and close ACDS according to the Form 5402, Appeals Transmittal and Case Memorandum instructions provided by the Appeals Technical Employee (ATE).
- (2) See IRM 8.20.7.13, *Civil Penalty MFT 13 (BMF) MFT 55 (IMF) Closing Procedures* for guidance on how to establish the MFT 13 and MFT 55 Civil Penalty (CVPN) Account.
- (3) APS will **not** transmit the Form 5402, *Appeals Transmittal and Case Memo* back to the originating function for this case type because this action is completed by the ATM per IRM 8.7.10.18, *Routing Form 5402 and ACM Feedback to Excise for Excise Tax Cases*.
- (4) The APS TE will take the following actions to process a Dyed Fuel and Refusal Penalty case assigned to them on Processing Employee Automated System (PEAS):
  - a) Review closing documents for special instructions.
  - b) Review and update ACDS with the closing information according to the Form 5402.
  - c) Input the Civil Penalty Account adjustments via IDRS CC: REQ54 according to the Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties* completed by the ATE and approved by the ATM.
  - d) See (5) below for the specific penalty reference number associated with each Dyed Fuel and Refusal Penalty IRC.
  - e) Enter your IDRS number in the F-8278 Item 12a "Terminal operator" field.
  - f) Enter the amount of the penalty sustained in ACDS "RevisedPen" field.
  - g) Enter ACKCLS in the ACDS "ACTION" field.
  - h) Suspend the case in PEAS and monitor the account adjustments until posted.
  - i) Transmit the closed file per the ATE instructions, or if there are no routing instructions, forward the closed file to the appropriate Campus Files Function, using Form 3210, *Document Transmittal*.
- (5) Each Dyed Fuel and Refusal penalty is assessed via a unique penalty reference number (PRN) as identified on Form 8278 in block 9 C. Excise:

**Attachment 2, continued**

<b>Dyed Fuel and Refusal Penalty IRC §</b>	<b>Penalty Reference Number</b>
IRC 6675	661
IRC 6715	656
IRC 6715A(a)(1) (same PRN)	665
IRC 6715A(a)(2) (same PRN)	665
IRC 6717	655
IRC 6718	657
IRC 6719	670
IRC 6720A	673
IRC 6725	667

- (6) When processing more than one Penalty Reference Number per CVPN account, use a sequential posting delay code (PDC) for the Blocking Series 53X adjustment(s).
- (7) Since the taxpayer has availed themselves of their “pre-assessment” appeal rights, APS must also input a TC 290 0.00 with Blocking Series 96X to set the Appeals Refusal Abatement Indicator on each CVPN account.